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Plant Variety Protection

How It Works For You

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
PA-1191



Plant Variety Protection

How It Works For You

The Plant Variety Protection Act (PVPA), in force since December 24, 1970, provides legal protection to developers of new varieties of plants which reproduce sexually—by seed. The kinds of protected plants range from farm crops to flowers and vegetables.

Developers of plants which reproduce sexually—by methods such as budding or grafting—have been protected since 1930 under the U.S. Patent Act.

The owner of a new—and novel—variety who obtains a Certificate of Protection under the PVPA has control over the use of that variety, somewhat like an inventor has control over his patented inventions. The owner of a Certificate may bring civil action against persons infringing on his rights.

The seeds, transplants, or plants of okra, celery, peppers, tomatoes, carrots, cucumbers—and first generation hybrids of any kind—are not covered by the law.

WHAT VARIETIES MAY BE PROTECTED

The law states that protection may be extended to a novel variety if it meets three qualifications:

Distinctness. The variety must differ from all known varieties in one or more of the following ways—morphological (shape, color), physiological (such as disease resistance), or other characteristics (such as milling characteristics of a new variety of wheat).

Uniformity. If any variations exist in the variety, they must be describable, predictable, and commercially acceptable.

Stability. The variety, when sexually reproduced, must remain unchanged in its essential and distinctive characteristics to a degree expected of similarly developed varieties.



WHEN PROTECTION IS NOT GRANTED

Under the following circumstances, the owner and the variety will not be entitled to protection:

Public Varieties. If the variety was sold or used by the public in the United States more than 1 year before the owner applied for protection.

Foreign Application. If an application on the same variety was filed in a foreign country more than 5 years before application was filed in the United States or if rights were granted in a foreign country more than 1 year before application was filed in the United States.

Prior Release. If someone else has previously released the variety. Evidence that the variety had been released before the owner applied for protection would be publication of a description of the variety within 6 months after the breeder had determined that the variety was new and available to the public.

HOW TO OBTAIN PROTECTION

Application forms for variety protection are available from the Plant Variety Protection Office (PVPO), Grain and Seed Division, Agricultural Marketing Service, U.S. Department of Agriculture, National Agricultural Library, Beltsville, MD. 20705. The application requires detailed information, including:

- The varietal name, or the temporary designation of the new variety.
- A full description of the variety, to include the pedigree, the breeding procedures, and a clear novelty claim.
- An objective description of the variety. Depending on the kind of plant, this could include such items as flower color, length of stem or leaf, etc.
- Submission of a viable sample of seed of the variety, along with the application and search fees totalling \$500, to the PVPO. The seed sample will be deposited at the National Seed Storage Laboratory in Fort Collins, Colorado.
- A specification if the owner's protected seed is to be sold by variety name only as a class of certified seed. Seed that is to be certified must be determined to conform to standards for generic purity and identity by an official seed certifying agency.

HOW APPLICATIONS ARE PROCESSED

All applications are considered to be confidential. Without authorization from the owner, only the name of the kind and variety and the certified seed specification are released. The PVPO publishes a quarterly journal containing a list of applications, abbreviated descriptions of protected varieties, and other information that may be of interest to the public.

Expert plant variety examiners in the PVPO review each application with the assistance of a computer bank of variety descriptions. If the examiners find the variety described in the application to be novel, and entitled to protection, they recommend to the PVPO Commissioner that a Certificate of Protection be awarded to the applicant.



The fees for filing for protection are:

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| (a) filing application | \$250 |
| (b) search or examination | \$250 |
| (c) issuance of certificate | \$250 |

The application and search fees are required when the application is filed. The PVPO will notify the applicant when the additional fee for issuance of a Certificate is required.

IF APPLICATION IS REFUSED

If the application is refused by the PVPO, the applicant receives reasons for the refusal and information to help in deciding whether to ask for reconsideration. If the applicant asks for a reconsideration and the application is refused again, the applicant may appeal to the Secretary of Agriculture.

Before reaching a decision, the Secretary will seek the advice of an appointed 14-member Plant Variety Protection Board, which includes both public officials and private citizens. An adverse ruling from the Secretary may be appealed further to the Court of Customs and Appeals and to other Federal Courts. The Board also advises the Secretary concerning adoption of regulations and rules of practice and whether a variety should be declared open for public use.

LABELING PROTECTED VARIETIES

After being notified that his application has been accepted by the PVPO, an applicant may label seed or plants of the novel variety with such words as "Unauthorized Propagation Prohibited (Unauthorized Seed Multiplication Prohibited)—U.S. Variety Protection Applied For." After a Certificate of Protection is issued, seed or plants may be labeled "U.S. Protected Variety." The labels give notice that protection of a variety may be enforced by the owner. Improper use of the labeling is a violation of the law.

WHAT PROTECTION MEANS

The owner of a Certificate may bring Civil action against persons infringing on his rights, and may ask a court to issue an injunction to prevent others from violating his rights. Any damages awarded by a court must at least compensate the Certificate owner for the infringement.

Acts performed without authority of the owner which constitute infringement of the owner's rights, include:

- Using seed marketed as "unauthorized propagation prohibited" to produce seed of the variety to market for growing purposes.
- Selling or offering the novel variety for sale.
- Dispensing the variety to another person without telling that person the variety is protected.
- Importing the variety into the United States or exporting it from the United States.
- Inducing a third party to commit any of the above acts.

If the applicant or Certificate owner has specified that the seed can be sold by variety name only as a class of certified seed, the sale of the seed by variety name as uncertified seed constitutes a violation of the **Federal Seed Act**.

Under the PVPA, farmers who wish to produce seed of a protected variety and sell it to seed merchandisers must obtain authorization from the owner of the Certificate. Seed merchandisers also need an authorization from the owner of the Certificate to resell the seed.

The owner of a Certificate may sell or assign his rights to someone else. The protected variety is the same as personal property.



LENGTH OF PROTECTION

The term of plant variety protection expires 17 years after the Certificate of Protection is issued. However, reciprocal agreements between the United States and other countries may reduce the length of protection for foreign applicants, based on the length of protection specified by the laws of their countries. The Certificate expires if the owner fails to replenish a supply of viable seed of the variety in the public repository, when requested to do so by the PVPO.

EXEMPTIONS UNDER THE ACT

Normally, the owner of a Certificate of Protection has control over the use of the variety by others. However, the Secretary of Agriculture may, under exceptional conditions, and subject to the advice of the Plant Variety Protection Board, declare a variety "open to public use" in order to supply the country with sufficient food, fiber, or feed. The Secretary would take this action if the owner of a Certificate is unable or unwilling to supply the public need for the variety at a fair price. The owner, in these circumstances, would be compensated for the public use.

The PVPA specifies that seed of a protected variety may be used by a grower whose primary occupation is the growing of crops for food or feed and not primarily the growing of crops for seeding purposes. A grower who has obtained the seed with the authority of the Certificate owner may use the seed to grow a crop and save the seed which results from that crop. The

grower may also sell the reproduced seed to a second grower whose primary occupation is growing crops for food or feed. The second grower, however, may not sell for seeding purposes any of the seed which he reproduces from the crop.

This exemption does not permit a grower to sell by variety name to another grower uncertified seed of a protected variety which is specified to be sold by variety name only as a class of certified seed.



HELP FOR BREEDERS, PRODUCERS, CONSUMERS

Plant research is a costly process. Before passage of the PVPA, there was no guarantee that developers of new varieties could recover their research costs. Others could buy seed of a new variety, produce a new crop, and sell the seed under their own label, giving no reimbursement to the original researcher for his labor.

Owners of Certificates of Protection under the PVPA are protected against such competition and can recover their research expenses during the period of protection. As a result, more money is now being invested in plant research—and agricultural producers and home gardeners are being offered more varieties of farm, vegetable, and flower seed than ever before.

All AMS services are available without regard to race, color, national origin, sex, or religion. If you know of any violations of this principle, send details to the Secretary of Agriculture, Washington, D.C. 20250.

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Supersedes AMS-557, "The Plant Variety Protection Act."